

## The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VHT, INC., a Delaware corporation,

Plaintiff,

V.

ZILLOW GROUP, INC., a Washington corporation; and ZILLOW, INC., a Washington corporation.

## Defendants.

No. 15-cv-1096-JLR

PRAEICE REGARDING  
PARTIES' JOINT SUBMISSION  
ON AMENDED PROPOSED  
VERDICT FORMS

The parties hereto provide the attached Parties' Joint Submission on Amended Proposed Verdict Forms to replace the version filed at Dkt. No. 252. The attached corrects errors in the previously filed version.

DATED this 30th day of January, 2017.

DAVIS WRIGHT TREMAINE LLP  
Attorneys for Plaintiff VHT, Inc.

By s/ Jonathan M. Lloyd  
Jonathan M. Lloyd, WSBA #37413  
James E. Howard, WSBA #37295  
Max B. Hensley, WSBA #47030  
1201 Third Avenue, Suite 2200  
Seattle, WA 98101-3045  
Telephone: (206) 622-3150  
Fax: (206) 757-7700  
E-mail: jonathanlloyd@dwt.com  
E-mail: jameshoward@dwt.com  
E-mail: maxhensley@dwt.com

1 and  
2

3 Marcia B. Paul (*pro hac vice*)  
4 1251 Ave of the Americas, Suite 2100  
5 New York, New York 10019  
6 Tel: (212) 603-6427  
7 Fax: (212) 489-8340  
8 E-mail: marciapaul@dwt.com  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

DATED this 30th day of January, 2017.

Davis Wright Tremaine LLP  
Attorneys for Plaintiff VHT, Inc.

By s/ Jonathan M. Lloyd  
Jonathan M. Lloyd, WSBA #37413  
1201 Third Avenue, Suite 2200  
Seattle, WA 98101-3045  
Telephone: (206) 622-3150  
Fax: (206) 757-7700  
E-mail: [jonathanlloyd@dwt.com](mailto:jonathanlloyd@dwt.com)

## The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VHT, INC., a Delaware corporation,

No. 2:15-cv-01096-JLR

**Plaintiff,**

V.

ZILLOW GROUP, INC., a Washington corporation; and ZILLOW, INC., a Washington corporation,

PARTIES' JOINT SUBMISSION ON  
AMENDED PROPOSED VERDICT  
FORMS

## Defendants.

Pursuant to the Court's Minute Order dated January 26, 2017 [Dkt. 249], the Parties respectfully submit this joint submission, which includes each party's amended proposed verdict form, and statement in support of its proposed verdict form.

PARTIES' JOINT SUBMISSION ON AMENDED  
PROPOSED VERDICT FORMS

(2:15-cv-01096-JLR) - 1  
DWT 31197378v2 0104728-000001

Davis Wright Tremaine LLP  
LAW OFFICES  
Suite 2200 • 1201 Third Avenue  
Seattle, Washington 98101-3045  
(206) 622-3150; Fax: (206) 757-7700

**PLAINTIFF'S STATEMENT IN SUPPORT OF ITS  
AMENDED PROPOSED VERDICT FORM**

In light of the legal and factual developments since January 9, 2017, Plaintiff VHT, Inc. (“VHT”) hereby submits its amended proposed verdict form, attached hereto as Appendix A (the “VHT Form”). VHT has designed the VHT Form to provide the jury with a rational and clear series of questions to answer that accurately reflect the claims VHT is bringing against Zillow, Zillow’s defenses to those claims, and the actual and statutory damages the jury will need to award for any VHT Photos it finds that Zillow has infringed.

By contrast, Zillow's amended proposed verdict form, attached hereto as Appendix B (the "Zillow Form") contains an ambiguous series of inquiries that will confuse and mislead the jury regarding the questions they need to answer. The following examples, contrasting the parties' proposed forms, demonstrate why the Court should use the VHT Form in this case.

*First*, while the VHT Form accurately reflects the three distinct claims VHT is asserting in this case – direct, contributory and vicarious infringement – the Zillow Form wholly ignores those separate claims and their separate elements: for instance, it improperly and confusingly suggests to the jury that prior notice is an element of each of direct and vicarious infringement.

**Second**, the VHT Form correctly identifies the two affirmative defenses Zillow has raised: implied license and fair use. The Zillow Form, by contrast, (a) omits fair use on the reproduction right; (b) inaccurately includes an express license defense which Zillow does not and cannot have; (c) inaccurately suggests that Zillow's implied license defense has any relation to the terms of VHT's SLA and TOU, the terms and enforceability of which are irrelevant to Zillow's implied license defense, which must be based on the conduct/actions/intent of VHT and Zillow under *Effects Associates v. Cohen*, 908 F.2d 555, 558-559 (9th Cir. 1990); and (d) unnecessarily and suggestively asks the jury to repeatedly subdivide the images into SLA/TOU on pages 2-6.

**Third**, the Zillow Form confusingly seeks to sub-divide the VHT Photos at issue into five groups, and purports in introductory clauses to determine issues properly for determination by either the Court or the jury. It creates these groups primarily based on whether the images were

1 actually displayed to Digs users and whether that display occurred before VHT provided  
2 “specific” notice of infringement to Zillow. In addition to usurping the function of the factfinder,  
3 these distinctions ignore VHT’s claims for infringement of its reproduction and derivative works  
4 rights, case law on Zillow’s liability for making the VHT Photos available for display on Digs,  
5 and the irrelevance of notice to most of VHT’s claims.

6 **Fourth**, while the VHT Form addresses damages issues in a straightforward manner, the  
7 Zillow Form again determines legal questions, posing its first damages question as seeking a  
8 single, total statutory damages award, implicitly deciding the issue of whether VHT is entitled to  
9 a separate award for each photo that has independent economic value, and misleadingly  
10 suggesting that VHT must prove a specific “total amount of money...it is owed” in the form of  
11 statutory damages, which mischaracterizes the purpose of statutory damages, ignoring its punitive  
12 (as well as compensatory) purposes. In addition, the Zillow Form confusingly intermixes liability  
13 and damages questions throughout, asking the jury to repeatedly determine issues of willfulness  
14 and eligibility for statutory damages for separate sets of VHT Photos, while leaving the  
15 calculation of both statutory and actual damages to a brief section at the end.

16 As the Court is well aware, the parties sharply disagree regarding the effect of the Ninth  
17 Circuit’s ruling in *Perfect 10, Inc. v. Giganews, Inc., et al.*, 2017 WL 279504 (9th Cir., Jan. 23,  
18 2017) on the claims in this case, and will address that dispute in the FRCP 50 motion Defendants  
19 have indicated they plan to file once VHT rests its case. VHT will not use this submission to  
20 argue that issue, but notes simply that *Giganews* presents facts far removed from those in issue  
21 here, and did not purport to change existing Ninth Circuit law on other aspects of copyright law,  
22 including longstanding precedents regarding contributory and vicarious infringement.

23 For these reasons, VHT respectfully asks the Court to use the VHT Form as the verdict  
24 form provided to the jury in this matter.

25  
26  
27  
PARTIES’ JOINT SUBMISSION ON AMENDED  
PROPOSED VERDICT FORMS  
(2:15-cv-01096-JLR) - 3  
DWT 31197378v2 0104728-000001

Davis Wright Tremaine LLP  
LAW OFFICES  
Suite 2200 · 1201 Third Avenue  
Seattle, Washington 98101-3045  
(206) 622-3150· Fax: (206) 757-7700

1                   **DEFENDANTS' STATEMENT IN SUPPORT OF THEIR**  
2                   **AMENDED PROPOSED VERDICT FORM**

3                   Zillow's verdict form is preferable to VHT's because it places the license issue that  
4                   could be dispositive of the whole case first, and then groups subsets of images in ways that  
5                   align with discrete claims and defenses.

6                   Following the threshold license issue, Zillow's verdict form groups the 22,011 images  
7                   that were posted to Zillow before any notice from VHT referring to them or the address of the  
8                   property to which they pertain, and that were also never displayed to users. Because they were  
9                   never displayed, copying is the only potential infringement at issue for these images. Because  
10                  the evidence will show that all such copying occurred automatically when users started the  
11                  process of posting these images to Digs and before any moderation by Zillow, the volitional act  
12                  doctrine is potentially dispositive for direct liability for infringement of these images. Because  
13                  those copies were essentially just cached versions of scaled copies of the original image that  
14                  Zillow already possessed, the fair use doctrine may dispose of both direct and indirect liability  
15                  regarding these claims as well. And because VHT had not provided any identification that  
16                  would allow Zillow to locate and remove these images before they were copied, they are  
17                  subject to common issues regarding secondary liability as well.

18                  The 2,078 displayed non-searchable pre-identification images are likewise subject to a  
19                  common volitional act issue because the evidence will show that even when Zillow moderators  
20                  reviewed them, it had no causal effect on their subsequent display. And again, Zillow's  
21                  inability to locate and remove them absent identification by VHT creates a common issue  
22                  regarding secondary liability.

23                  Zillow groups the 3,904 displayed searchable pre-identification images together because  
24                  they are also subject to common issues regarding secondary liability and are only subject to  
25                  Zillow's license defense for direct liability. Finally, Zillow groups the 131 images created after  
26                  notices from VHT together because these are the only images that are potentially subject to  
27                  secondary liability for contributory infringement by material contribution under *Giganews*.

PARTIES' JOINT SUBMISSION ON AMENDED  
PROPOSED VERDICT FORMS

(2:15-cv-01096-JLR) - 4  
DWI 31197378v2 0104728-000001

Davis Wright Tremaine LLP  
LAW OFFICES  
Suite 2200 · 1201 Third Avenue  
Seattle, Washington 98101-3045  
(206) 622-3150· Fax: (206) 757-7700

1 VHT's verdict form is inefficient and confusing because it initially groups together  
2 differently situated images in complicated ways only to reach for the first time at the end the  
3 central issue in this case that could be dispositive for all of them. It also misstates the law of  
4 vicarious liability after *Giganews* in an attempt to mislead the jury into a blanket finding of  
5 liability regarding images that Zillow had no practical ability to identify and remove and did  
6 not directly profit from. Because VHT's verdict form is designed to cause the jury to treat  
7 differently situated images the same way and engage in complicated exercises that could be  
8 mooted by later questions, it should be rejected.

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

PARTIES' JOINT SUBMISSION ON AMENDED  
PROPOSED VERDICT FORMS  
(2:15-cv-01096-JLR) - 5  
DWT 31197378v2 0104728-000001

Davis Wright Tremaine LLP  
LAW OFFICES  
Suite 2200 • 1201 Third Avenue  
Seattle, Washington 98101-3045  
(206) 622-3150• Fax: (206) 757-7700

1                   **APPENDIX A – PLAINTIFF’S AMENDED PROPOSED VERDICT FORM**

2

3

4

5

6

7

8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT SEATTLE

11                  VHT, INC., a Delaware corporation,

12                  Plaintiff,

13                  v.

14                  ZILLOW GROUP, INC., a Washington  
15                  corporation; and ZILLOW, INC., a Washington  
16                  corporation,

17                  Defendants.

18                  No. 2:15-cv-1096- JLR

19                  **PLAINTIFF’S REVISED  
20                  PROPOSED JURY VERDICT  
21                  FORM**

22                  We, the jury, answer the questions submitted by the Court as follows:

23                  **Direct Copyright Infringement**

24                  1. Has Zillow (i) reproduced or (ii) publicly displayed or (iii) created derivative works  
25                  from or (iv) distributed via an email or blog post any of the 28,125 VHT Photos at issue?

26                  \_\_\_\_\_ Yes                 \_\_\_\_\_ No

27                  2. If your answer to Question 1 was “Yes”, for how many of the 28,125 VHT Photos at  
28                  issue has Zillow taken at least one of those four actions? Enter that number below. If your  
29                  answer to Question 1 was “No”, please enter zero below.

30                  Enter the number here: \_\_\_\_\_

31                  PARTIES’ JOINT SUBMISSION ON AMENDED  
32                  PROPOSED VERDICT FORMS

33                  (2:15-cv-01096-JLR) - 6  
34                  DWT 31197378v2 0104728-000001

35                  Davis Wright Tremaine LLP  
36                  LAW OFFICES  
37                  Suite 2200 · 1201 Third Avenue  
38                  Seattle, Washington 98101-3045  
39                  (206) 622-3150· Fax: (206) 757-7700

## **Contributory Copyright Infringement**

3. For each of the 28,125 VHT Photos at issue **not included** in your answer to Question 2 above, has Zillow with actual knowledge of infringing use, either (i) induced users of Zillow.com to reproduce **or** publicly display **or** create derivative works from any VHT Photos, **or** (ii) materially contributed to any of those actions by users?

Yes                       No

4. If your answer to Question 3 was "Yes", for how many of the 28,125 VHT Photos at issue not included in your answer to Question 2 above has Zillow taken at least one of the acts in Question 3? Enter that number below. If your answer to Question 3 was "No", please enter zero below.

Enter the number here: \_\_\_\_\_

5. Please add the numbers you entered in response to Questions 2 and 4 above and enter it below. Note that your total should not exceed 28,125.

Enter the number here: \_\_\_\_\_

## **Vicarious Copyright Infringement**

6. For each of the 28,125 VHT Photos at issue not included in your answer to Question 5 above, has Zillow created a platform where users can reproduce or publicly display or create derivative works from any VHT Photos, where Zillow (i) has the right and ability to control the acts of those users, and (ii) has benefited from those acts by users?

Yes                       No

7. If your answer to Question 6 was “Yes”, for how many of the 28,125 VHT Photos at issue not included in your answer to Question 5 above has Zillow taken at least one of the acts in Question 6? Enter that number below. If your answer to Question 6 was “No”, please enter zero below.

Enter the number here:

8. Please add the numbers you entered in response to Questions 5 and 7 above and enter it below. Note that your total should not exceed 28,125.

Enter the number here:

**PARTIES' JOINT SUBMISSION ON AMENDED  
PROPOSED VERDICT FORMS**

**PROPOSED VERDICT FORM**  
**(2:15-cv-01096-JLR) - 7**  
**DWT 31197378v2 0104728-000001**

Davis Wright Tremaine LLP  
LAW OFFICES  
Suite 2200 • 1201 Third Avenue  
Seattle, Washington 98101-3045  
(206) 622-3150; Fax: (206) 757-7700

1  
2            **Affirmative Defense: Implied License**

3  
4        9. Of the VHT Photos included in your answer to Question 8 above, did Zillow have an  
5 implied license to use any of them on Digs?  
6

7            \_\_\_\_\_ Yes            \_\_\_\_\_ No  
8

9        10. If your answer to Question 9 was "Yes", for how many of the VHT Photos included in  
10 your answer to Question No. 8 did Zillow have an implied license to use those photos on Digs?  
11 Enter that number below. If your answer to Question 9 was "No", please enter zero below.  
12

13            Enter the number here: \_\_\_\_\_  
14

15        11. Please subtract the number you entered in response to Question 10 from the number you  
16 entered in response to Question 8 and enter it below.  
17

18            Enter the number here: \_\_\_\_\_  
19

20            **Affirmative Defense: Fair Use**

21        12. Of the number of VHT Photos included in your answer to Question 2 above, did  
22 Zillow's reproduction of any of those photos for use on Digs constitute a fair use?  
23

24            \_\_\_\_\_ Yes            \_\_\_\_\_ No  
25

26        13. If your answer to Question 12 was "Yes", for how many of the VHT Photos included in  
27 your answer to Question No. 2 was Zillow's reproduction of those photos for use on Digs a fair  
use? Enter that number below. If your answer to Question 12 was "No", please enter zero  
below.

28            Enter the number here: \_\_\_\_\_  
29

30        14. Please subtract the number you entered in response to Question 13 from the number you  
31 entered in response to Question 11 and enter it below.  
32

33            Enter the number here: \_\_\_\_\_  
34

### **Copyright Infringement—Damages**

15. Of the VHT Photos identified in your answer to Question 14, how many are eligible for statutory damages?

Enter the number here: \_\_\_\_\_

16. Subtract the number you entered in response to Question 15 from the number you entered in response to Question 14 and enter the resulting number below. This number represents the number of VHT Photos you identified in your answer to Question 14 which are only eligible for actual damages.

Enter the number here: \_\_\_\_\_

### **Copyright Infringement—Actual Damages and Profits**

17. If you have found that Zillow has infringed any of the VHT Photos, you must award VHT both its actual damages (the amount of a reasonable, license fee for the number of infringed photographs) and the amount of Zillow's infringing profits that is not included in VHT's actual damages. Use Instruction Numbers [TO BE DETERMINED] to guide your award of actual damages and infringing profits. As indicated below, first calculate VHT's actual damages and Zillow's infringing profits using the total number of infringed VHT Photos, as identified in your answer to Question 14. Then separately calculate actual damages using only the VHT Photos that are not eligible for statutory damages, as identified in your answer to Question 16.

First, calculate actual damages and Zillow's profits from **all** infringed images.

- a. How much actual damage do you find that VHT suffered as a result of Zillow's infringement of the VHT Photos? Use the number of VHT Photos that you found Zillow infringed in Question 14 to calculate this award.

Enter that amount here: \$

- b. How much of Zillow's profits are attributable to its infringement of the VHT Photos? Use the number that you found Zillow infringed in answering Question 14 to calculate this award.

Enter that amount here: \$

1 Next, calculate actual damages and Zillow's profits from infringement of only the  
2 photographs that are not eligible for statutory damages.

- 3 c. How much actual damage do you find that VHT suffered as a result of Zillow's  
4 infringement of the VHT Photos? Use only the number of VHT Photos that you  
5 found Zillow infringed in Question 16 to calculate this award.

6 Enter that amount here: \$ \_\_\_\_\_  
7

- 8 d. How much of Zillow's profits are attributable to its infringement of the VHT  
9 Photos? Use only the number of VHT Photos that you found Zillow infringed in  
10 Question 16 to calculate this award.

11 Enter that amount here: \$ \_\_\_\_\_  
12

### Copyright Infringement—Statutory Damages

- 13 18. If you have found that Zillow has infringed any of the VHT Photos identified in your  
14 answer to Question 15, you must award statutory damages to VHT for those photos,  
15 which VHT may elect after your verdict to receive instead of actual damages and  
16 infringing profits for those VHT Photos. Use Instruction Nos. [TO BE  
17 DETERMINED] to guide your award of statutory damages.

- 18 a. Do the VHT Photos identified in your answer to Question 15 each have independent  
19 economic value?

20 \_\_\_\_\_ Yes \_\_\_\_\_ No  
21

- 22 b. If you answered "Yes" to Question 18(a), each of those VHT Photos is an infringed  
23 work. You will use the same total you found in answering Question 15 above to  
24 calculate statutory damages.

25 Enter total from Question 15 here: \_\_\_\_\_  
26

- 27 c. If you answered "No" to Question 18(a), then how many of the VHT Photos  
28 identified in your answer to Question 15 have independent economic value?

29 Enter that number here: \_\_\_\_\_  
30

- 31 19. Do you find Zillow's conduct to be willful, innocent, or regular?

32 \_\_\_\_\_ Willful (\$750-\$150,000 per work)  
33

34 \_\_\_\_\_ Regular (\$750-\$30,000 per work)  
35

36 \_\_\_\_\_ Innocent (\$200-\$30,000 per work)  
37

- 1
- 2 20. If you answered "Yes" to Question 18(a), calculate the total amount of statutory  
3 damages by deciding on a statutory damages award for each infringement within the  
4 range you selected in Question 19, and then multiply the award by the number  
5 identified in your answer to Question 18(b). Write that figure below, and then go to the  
6 end of this verdict form.

7 Enter total statutory damages here: \_\_\_\_\_  
8

- 9
- 10 21. If you answered "No" to Question No. 18(a), calculate the total amount of statutory  
11 damages by deciding on a statutory damages award for each infringement within the  
12 range you selected in Question 19, and then multiply the award by the number  
13 identified in your answer to Question 18(c). Write that figure below, and then go to the  
14 end of this verdict form.

15 Enter total statutory damages here: \_\_\_\_\_  
16

17 ***INSTRUCTION: Sign this verdict and notify the bailiff.***  
18

19 \_\_\_\_\_  
20 FOREPERSON  
21 \_\_\_\_\_  
22

23 Dated  
24 \_\_\_\_\_  
25  
26  
27

1

**APPENDIX B – DEFENDANTS’ AMENDED PROPOSED VERDICT FORM**

2

**License Defense**

3

Was Zillow’s use of VHT’s images on Digs authorized by an express or implied license?

4

Answer separately for categories of images that are or may be subject to different forms of

5

customer licenses from VHT.

6

**1. Service Level Agreement (“SLA”)?:**

7

*Authorized* \_\_\_\_\_

8

*Unauthorized* \_\_\_\_\_

9

**2. Claimed Terms of Use (“TOU”)?:**

10

*Authorized* \_\_\_\_\_

11

*Unauthorized* \_\_\_\_\_

12

13

If you answered YES for ALL categories of images, do not answer any further questions  
and return this form to the bailiff. If you answered NO for any category/categories of  
images, please continue to the next page, but only answer the questions that follow  
respecting the category/categories of images whose use by Zillow you found to be  
unlicensed.

### **Undisplayed Images Posted Before Specific Identification**

22,011 of the 28,125 images at issue in this case were:

- (i) created in Digs before VHT specifically identified them or the address of the property they depict to Zillow; and
  - (ii) were never displayed to users.

14,956 of these images are eligible for statutory damages, and 7,055 are not. Answer only respecting categories of images that you have found to be unlicensed.

**Of the 14,956 images that are eligible for statutory damages,**

**13,132 are subject to a form of the SLA**

3. *What number of these images, if any, do you find were infringed by Zillow, directly or indirectly:*

If you found any images to have been infringed in response to question 3, you must determine which of these images were infringed innocently, willfully, or neither.

4. How many of the images listed in response to question 3 do you find to be infringed:

*Innocently*                    *Willfully*                    *Neither innocently nor willfully?*

---

824 [View booklist](#) [View course](#) [View the TOU](#)

5. *What number of these images, if any, do you find were infringed by Zillow, directly or indirectly?*

If you found any images to have been infringed in response to question 5, you must determine which of these images were infringed innocently, willfully, or neither.

6. How many of the images listed in response to question 5 do you find to be infringed:

*Innocently*                    *Willfully*                    *Neither innocently nor willfully?*

**Continue to next page.**

1                   ***Undisplayed Images Posted Before Specific Identification (Continued)***

2                   **Of the 7,055 that are not eligible for statutory damages,**

3                   **6,083 are subject to a form of the SLA**

- 4                   7.    *What number of these images, if any, do you find were infringed by Zillow, directly or  
5                   indirectly:*
- 

6                   **972 may be subject to a form of the TOU**

- 7                   8.    *What number of these images, if any, do you find were infringed by Zillow, directly or  
8                   indirectly:*
- 

9  
10                  **Continue to the next page**

## **Displayed, Non-Searchable Images Posted Before Specific Identification**

2,078 of the 28,125 images at issue in this case were:

- (i) “Private” or “Board Only” images posted by users to their own Digs boards before VHT specifically identified them or the address of the property they depict Zillow;
  - (ii) never selected by Zillow to be searchable on Digs; and
  - (iii) at some point displayed to users.

1,542 of these images are eligible for statutory damages, and 536 are not. Answer only respecting categories of images that you have found to be unlicensed.

**Of the 1,542 images that are eligible for statutory damages,**

**1,294 are subject to a form of the SLA**

9. *What number of these images, if any, do you find were infringed by Zillow, directly or indirectly:*

If you found any images to have been infringed in response to question 9, you must determine which of these images were infringed innocently, willfully, or neither.

10. How many of the images listed in response to question 9 do you find to be infringed:

*Innocently*                    *Willfully*                    *Neither innocently nor willfully?*

**248** may be subject to a form of the TOU, including one also used in an e-mail.

11. *What number of these images, if any, do you find were infringed by Zillow, directly or indirectly:*

If you found any images to have been infringed in response to question 11, you must determine which of these images were infringed innocently, willfully, or neither.

12. How many of the images listed in response to question 11 do you find to be infringed:

*Innocently*                    *Willfully*                    *Neither innocently nor willfully?*

**Continue to next page.**

1           ***Displayed, Non-Searchable Images Posted Before Specific Identification (Continued)***

2           **Of the 536 that are not eligible for statutory damages,**

3           **442 are subject to a form of the SLA**

4           *13. What number of these images, if any, do you find were infringed by Zillow, directly or  
5           indirectly:*

6           **94 may be subject to a form of the TOU**

7           *14. What number of these images, if any, do you find were infringed by Zillow, directly or  
8           indirectly:*

9  
10           **Continue to the next page**

1                   **Displayed, Searchable Images Posted Before Specific Identification**

2                   3,904 of the 28,125 images at issue in this case were:

- 3                   (i) “Searchable” or “Searchable Board” images posted to Digs before VHT specifically  
4                   identified them or the address of the property they depict to Zillow;  
5                   (ii) selected by Zillow to be searchable on Digs; and  
6                   (iii) at some point displayed to users.

7                   2,683 of these images are eligible for statutory damages, and 1,222 are not. Answer only  
8                   respecting categories of images that you have found to be unlicensed.

9                   **Of the 2,683 images that are eligible for statutory damages,**

10                  **2,547 are subject to a form of the SLA**

11                  15. *What number of these images, if any, do you find were infringed by Zillow, directly or  
indirectly:*

12                  \_\_\_\_\_

13                  If you found any images to have been infringed in response to question 15, you must determine  
14                  which of these images were infringed innocently, willfully, or neither.

15                  16. *How many of the images listed in response to question 15 do you find to be infringed:*

16                  Innocently                   Willfully                   Neither innocently nor willfully?

17                  \_\_\_\_\_                   \_\_\_\_\_                   \_\_\_\_\_

18                  **136 may be subject to a form of the TOU.**

19                  17. *What number of these images, if any, do you find were infringed by Zillow, directly or  
indirectly:*

20                  \_\_\_\_\_

21                  If you found any images to have been infringed in response to question 17, you must determine  
22                  which of these images were infringed innocently, willfully, or neither.

23                  18. *How many of the images listed in response to question 17 do you find to be infringed:*

24                  Innocently                   Willfully                   Neither innocently nor willfully?

25                  \_\_\_\_\_                   \_\_\_\_\_                   \_\_\_\_\_

26                  **Continue to next page.**

1           ***Displayed, Searchable Images Posted Before Specific Identification (Continued)***

2           **Of the 1,221 that are not eligible for statutory damages,**

3           **1,148 are subject to a form of the SLA**

4           *19. What number of these images, if any, do you find were infringed by Zillow, directly or  
5           indirectly:*

6           **73 may be subject to a form of the TOU**

7           *20. What number of these images, if any, do you find were infringed by Zillow, directly or  
8           indirectly:*

9

10           **Continue to the next page**

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

1           **Images Created After Specific Identification, Regardless of Type or Display**

2           131 the 28,125 images at issue in this case were posted to Digs after VHT specifically  
3           identified them or the address of the property they depict to Zillow. All of these images are  
4           eligible for statutory damages. Answer only respecting categories of images that you have  
5           found to be unlicensed.

6           **Of these images,**

7           **125 are subject to a form of the SLA**

8           21. *What number of these images, if any, do you find were infringed by Zillow, directly or  
indirectly:*

9           \_\_\_\_\_

10          If you found any images to have been infringed in response to question 21, you must determine  
11          which of these images were infringed innocently, willfully, or neither.

12          22. *How many of the images listed in response to question 5 do you find to be infringed:*

13          Innocently

13          Willfully

13          Neither innocently nor willfully?

14          \_\_\_\_\_

14          \_\_\_\_\_

14          \_\_\_\_\_

15           **6 may be subject to a form of the TOU.**

16           23. *What number of these images, if any, do you find were infringed by Zillow, directly or  
indirectly:*

17           \_\_\_\_\_

18          If you found any images to have been infringed in response to question 21, you must determine  
19          which of these images were infringed innocently, willfully, or neither.

20          24. *How many of the images listed in response to question 7 do you find to be infringed:*

21          Innocently

21          Willfully

21          Neither innocently nor willfully?

22          \_\_\_\_\_

22          \_\_\_\_\_

22          \_\_\_\_\_

24           **Turn to the next page**

1

## Image Used in a Blog Post

2        1 of the 28,125 images at issue in this case was used in a blog post by Zillow. This image  
3 is eligible for statutory damages and is subject to a form of the SLA. Answer only respecting  
4 categories of images that you have found to be unlicensed.

5        25. *What number of these images, if any, do you find were infringed by Zillow, directly or  
indirectly:*

6        \_\_\_\_\_

7        If you found any images to have been infringed in response to question 25, you must determine  
8 which of these images were infringed innocently, willfully, or neither.

9        26. *How many of the images listed in response to question 5 do you find to be infringed:*

10      *Innocently*                  *Willfully*                  *Neither innocently nor willfully?*  
11      \_\_\_\_\_                          \_\_\_\_\_                          \_\_\_\_\_

12      **Turn to the next page**

## Damages

**Answer the following question ONLY if you have found that Zillow infringed VHT's copyright in at least one work for which VHT has elected statutory damages in this case.**

1. *What is the total amount of money that VHT has proven it is owed for all infringements of all images for which it has elected to receive statutory damages in this case?:*

**Answer the following question ONLY if you have found that Zillow infringed VHT's copyright in at least one work for which VHT has elected actual damages in this case.**

2. *image, that VHT has proven it is owed for all infringements of all images for which it has elected to receive actual damages in this case?:*

3. What is the **total** amount of money that VHT has proven it is owed for all infringements of all images for which it has elected to receive actual **damages** in this case?:

PARTIES' JOINT SUBMISSION ON AMENDED  
PROPOSED VERDICT FORMS  
(2:15-cv-01096-JLR) - 21  
DWT 31197378v2 0104728-000001

Davis Wright Tremaine LLP  
LAW OFFICES  
Suite 2200 • 1201 Third Avenue  
Seattle, Washington 98101-3045  
(206) 622-3150; Fax: (206) 757-7700

1 DATED this 27th day of January, 2017.

2 DAVIS WRIGHT TREMAINE LLP

3 s/ Max Hensley

4 Jonathan M. Lloyd, WSBA No. 37413  
James L. Howard, WSBA No. 37259  
5 Max B. Hensley, WSBA No. 47030  
1201 Third Avenue, Suite 2200  
Seattle, Washington 98101-3045  
Tel: 206.622.3150  
Fax: 206.757.7700  
7 E-mail: jonathanlloyd@dwt.com  
E-mail: maxhhensley@dwt.com

8 Marcia B. Paul  
9 *admitted pro hac vice*  
1633 Broadway, Suite 2700  
10 New York, New York 10019  
Tel: 212.489.8230  
11 Fax: 212.489.8340  
E-Mail: marciapaul@dwt.com

12 *Attorneys for VHT, Inc.*

SUSMAN GODFREY LLP

s/ Edgar Sargent

Edgar G. Sargent, WSBA No. 28283  
Ian B. Crosby, WSBA No. 28461  
Genevieve Vose Wallace, WSBA No. 38422  
Jordan Connors, WSBA No. 41649  
Jenna Farleigh, WSBA No. 47392  
1201 Third Avenue, Suite 3800  
Seattle, Washington 98101  
Tel: 206.516.3880  
Fax: 206.516.3883  
E-mail: esargent@susmangodfrey.com  
E-mail: icrosby@susmangodfrey.com  
E-mail: gwallace@susmangodfrey.com  
E-mail: jconnors@susmangodfrey.com  
E-mail: jfarleigh@susmangodfrey.com

13 *Attorneys for Zillow Group, Inc. and Zillow, Inc.*

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27 PARTIES' JOINT SUBMISSION ON AMENDED  
PROPOSED VERDICT FORMS  
(2:15-cv-01096-JLR) - 1  
DWL 31197378v2 0104728-000001

Davis Wright Tremaine LLP  
LAW OFFICES  
Suite 2200 · 1201 Third Avenue  
Seattle, Washington 98101-3045  
(206) 622-3150· Fax: (206) 757-7700

1  
2                   **CERTIFICATE OF SERVICE**  
3  
4

5                   I hereby certify that on January 27, 2017, I electronically served the foregoing on  
6                   counsel of record for Defendants Zillow, Inc. and Zillow Group, Inc., pursuant to the parties'  
7                   agreement on electronic service under Rule 6(d).  
8

9                   DATED this 27th day of January, 2017.  
10

11                   Davis Wright Tremaine LLP  
12                   Attorneys for Plaintiff VHT, Inc.  
13

14                   By s/ Max B. Hensley  
15                   Max B. Hensley, WSBA #47030  
16                   1201 Third Avenue, Suite 2200  
17                   Seattle, WA 98101-3045  
18                   Telephone: (206) 622-3150  
19                   Fax: (206) 757-7700  
20                   E-mail: maxhensley@dwt.com  
21  
22  
23  
24  
25  
26  
27

PARTIES' JOINT SUBMISSION ON AMENDED  
PROPOSED VERDICT FORMS  
(2:15-cv-01096-JLR) - 2  
DWT 31197378v2 0104728-000001

Davis Wright Tremaine LLP  
LAW OFFICES  
Suite 2200 · 1201 Third Avenue  
Seattle, Washington 98101-3045  
(206) 622-3150· Fax: (206) 757-7700